IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 31395 of 2006(K)

PETITIONER:

NICHOLAS HOLTEN,
S/O.JACOB, MURIKKUTHARA HOUSE,
ERAMALLOOR P.O., EZHUPUNNA VILLAGE,
EZHUPUNNA PANCHAYATH, CHERTHALA TALUK.

BY ADV. SRI.C.K.SAJEEV

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY,
DEPRTMENT OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM.

2. SECRETARY, EZHUPUNNA GRAMA PANCHAYATH,
ERAMALLOOR P.O., CHERTHALA.

3. JEEVAN JOSE, MURIKKUTHARA,
ERAMALLOOR P.O., CHERTHALA.

4. KENNEDY JOSE, MURIKKUTHARA,
ERAMALLOOR P.O., CHERTHALA.

5. JOSEPH JOSEPH,
MURIKKUTHARA, ERAMALLOOR P.O.,
CHERTHALA.

(FOURTH RESPONDENT IS REMOVED FROM THE PARTY ARRAY VIDE ORDER ON I.A. NO.10525/07 DATED 10.8.2007)

R1 BY SR. GOVERNMENT PLEADER (SHRI K. J. MOHAMMED ANZAR)

R2 BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL
JEEVAN.M.J.(PARTY-IN-PERSON)R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 31395 OF 2006 K

Dated this the 10th August, 2007

JUDGMENT

Petitioner has approached this Court challenging Ext.P9 and seeking a mandamus commanding respondents 1 & 2 to take urgent steps to demolish the illegal construction made by respondents 3 to 5 by implementing Exts.P4 and P6. Ext.P9 is an order passed by the Ombudsman. According to petitioner and the respondent Panchayat, there is illegality in the matter of construction of the building. The third respondent appeared in person and I have heard him. According to petitioner, he has filed a complaint against the construction being put up by the third respondent and one Kennedy Jose who, later the petitioner has got deleted from the party array. They are the children of the fifth respondent. The fifth respondent was the petitioner before the Ombudsman as evidenced by Ext.P9. By the impugned order, the Ombudsman directed the issuance of licence to the petitioner for the construction made on the old

foundation. Ext.P8 was passed on 18.8.2006. Apparently, the Panchayat had objection and the Panchayat did not accept the request of the fifth respondent and the fifth respondent was forced to bring to the notice of the Ombudsman whereupon the Ombudsman passed Ext.P9 order wherein it is stated that as per order dated 18.8.2006 (Ext.P8), he had found that the contention of the fifth respondent that he has constructed the building on the old foundation which was in existence before 1991 is evident from his title deed, and the Ombudsman had directed the petitioner (fifth respondent herein) to place a copy of the document before the Panchayat, who should peruse the document. It is also observed that the petitioner/fifth respondent had submitted the copy of the document to the Panchayat and instead of carrying out the direction, the Secretary is personally harassing the petitioner by asking unnecessary questions as to whether the title deed is a clear title deed or not, whether there is any dispute on the title deed, etc. etc. It is stated therein that the Panchayat has no business to make such enquiries unless that

issue has been raised by anybody. Thereafter, the Panchayat was directed to issue the licence to the petitioner/fifth respondent within two weeks. Petitioner is stated to be a neighbour who has filed Ext.P1 complaint. Respondents 3 and 5 filed a Counter Affidavit. It is stated that the complaint in Ext.P1 has nothing to do with the order in question and the petitioner has no locus standi. The Panchayat has also filed a Counter Affidavit in which it is stated that there are objections as there is violation of Rule 220(b) of the Kerala Panchayat Raj Act.

2. Having regard to all facts, I feel that an opportunity should be given to the petitioner to raise his objections before the Ombudsman. It is also noted that the Panchayat has raised objection to the construction being in violation of Section 220 (b). In such circumstances, Ext.P9 order is quashed and the Ombudsman will hear the petitioner, second respondent and also respondents 3 & 5. In view of the urgency expressed by the third respondent in the matter, the following directions are

issued:

The petitioner, respondents 2, 3 and 5 or their representatives shall appear before the Ombudsman on 21.8.2007. There will be a direction that OP No.370/06 shall be called on 21.8.2007. The Ombudsman will hear the petitioner, respondents 2, 3 and 5 or their representatives and take a decision in the matter in accordance with law, within a period of two weeks thereafter.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

kbk.